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COMMISSION ON HUMAN RIGHTS

Inter-sessional open-ended working group
on a draft optional protocol to the
Convention on the Rights of the
Child on involvement of children
in armed conflicts
Sixth session
Geneva, 10-21 January 2000

COMMENTS ON THE REPORT OF THE WORKING GROUP

Report of the Secretary-General

Addendum

The present document contains comments submitted by the Governments of Belarus, Ecuador, Turkey and the United States of America.

Belarus

[Original: Russian]
[15 November 1999]

1. The Republic of Belarus is party to most of the international agreements governing relations during armed conflicts. For example, it is a party to the four Geneva Conventions and their two Protocols Additional relating to the Protection of Victims of International Armed Conflicts and the Protection of Victims of Non-International Armed Conflicts, the 1954 Convention for the Protection of Cultural Property in the Event of Armed Conflict and its Protocol, the 1989 International Convention against the Recruitment, Use, Financing and Training of Mercenaries, the 1948 Convention on the Prevention and Punishment of the Crime of Genocide, the 1969 Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity, as well as the multilateral instruments adopted in the framework of the Hague Peace Conferences of 1899 and 1907.

2. The Republic of Belarus has no special legislation on the status of children in armed conflicts, their special status is taken into account in the performance of military service as well as in determining punishment for the commission of crimes in peacetime. Under its Act on the Rights of the Child, the participation of children in military activities and in armed conflicts, the dissemination of propaganda in favour of war and violence among children, as well as the creation of military formations are all prohibited.

3. Under the Act of the Republic of Belarus on Conscription and Military Service, citizens of the Republic between the ages of 18 and 27 are called up for military service in peacetime. When mobilization is declared and persons are conscripted in wartime those from 18 years of age to the upper age limit for reservists laid down in this Act can also be called up for military service. During wartime, the President of the Republic of Belarus can lower the call-up age and raise the upper age limit for calling up reservists.

Ecuador

[Original: Spanish]
[15 November 1999]

4. Ecuador is in favour of fixing the recruitment age, as well as the participation age, at 18. This age limit would apply to both international and domestic conflicts, as well as to governmental and non-governmental activities. Ecuador is therefore in favour of the first option.

5. As regards the procedure for the adoption of the optional protocol, Ecuador tends to favour alternative B: implicit consensus. In any event, it considers that States wishing to do so should be able to submit comments on their position in respect of the optional protocol to be subsequently noted in an official manner. Ecuador, for example, would state that persons of under 18 studying at military or police schools are not covered by the general provision since they are neither recruits nor participants in armed conflicts but students whose courses include training in military theory.

6. As regards what should be done with the working group if agreement is not reached, Ecuador considers that negotiations should be suspended for 2-3 years, in other words, it would opt for alternative A. In no case, however, should the working group be dissolved.

Turkey

[Original: English]
[12 October 1999]

7. A successful and timely conclusion of the draft optional protocol on the involvement of children in armed conflicts is the sincere wish of the Turkish Government. Appreciating the dedicated work of the Chairperson of the working group, Mrs. Catherine von Heidenstam, the Government of Turkey would like to assure her of its continued cooperation and support.

8. One particular concern to the authorities of Turkey has been the concept of "voluntary recruitment" for children under 18 years. Although the minimum age for obligatory recruitment in Turkey has been set as 20 years, voluntary recruitment, which also encompasses children attending military schools and colleges where they are not subjected to armed conflicts, should clearly be identified, and exempted from the scope of the draft protocol. Thus, the Government believes that the reference to military schools in the draft as envisaged in annex II to document E/CN.4/1998/102 ("Chairman's perception", article 2, paragraph 3) should be maintained.

United States of America

[Original: English]
[3 December 1999]

9. The United States Government regrets that the fifth session of the working group on an optional protocol to the Convention on the Rights of the Child which met in Geneva in January 1999 failed to reach consensus on any of the key issues under discussion. The United States condemns the use of children in armed conflict contrary to international standards, and actively supports international efforts to end the practice.

10. The United States has prepared an alternative text (reproduced below) of an optional protocol in the hope of ending the impasse in the working group's negotiations. The United States proposal addresses the real problems confronting child soldiers, i.e., their recruitment and use by non-State actors, the need for international cooperation in their rehabilitation and reintegration, and the establishment of an effective mechanism for international scrutiny of the implementation by States of their obligations with respect to children in armed conflict. The United States proposal would also commit States Parties to raise the minimum age for recruitment into their national armed forces and for participation of such forces in armed conflict from 15 years, which is the minimum age now provided in the Convention on the Rights of the Child and in Protocol I additional to the Geneva Conventions of 1949.

11 The United States hopes other Governments may find the United States proposal worthy of support at the next session of the working group in January 2000 in Geneva

Widely ratifiable

12 One critical aspect of a new human rights protocol in this area is that it be widely ratifiable Since nearly one half of the States Members of the United Nations allow persons under 18 in their national armed forces, it is clear that there is no international consensus to raise the minimum age for recruitment and participation in national armed forces to 18

13 The United States proposal attempts to deal with this fact in a creative and constructive manner that seeks to improve protections for children in armed conflict The proposal requires States Parties to agree to establish under their national laws a minimum age for recruitment into their national armed forces and for participation in such forces in armed conflict that is higher than age 15, the current international standard, and States Parties would agree not to recruit compulsorily into their national armed forces those under the age of 18 With respect to voluntary recruitment, a State Party would agree to deposit a binding declaration which would set forth the minimum age that it would apply with respect to (a) voluntary recruitment of persons into its national armed forces and (b) the participation of such persons in armed conflict

14 This proposal recognizes that the problems confronting children in armed conflict do not lie in the recruitment and participation practices of the vast majority of national armed forces, like those of the United States, which allow those aged 17 to volunteer with parental consent to join their national armed forces and to participate in those armed forces once they have been properly trained

15 It is essential for the United States - and other States, as well - to attract prospective military personnel at the critical juncture when they are about to leave secondary school This is equally important for all countries which utilize all-volunteer forces and must compete with all other employment sectors rather than rely on conscription The voluntary recruitment of 17-year-olds with bona fide parental consent is simply not relevant to the suffering of children affected by armed conflict

Militias and paramilitary groups

16 The true crisis lies in the recruitment - especially the forcible recruitment - of young children, some as young as 9 or 10, for use in armed conflict by non-State actors, and the need to assist children who have been victims of warfare The United States proposal confronts this problem directly It would require that States Parties have or enact legislation to ensure that recruitment below age 18 by dissident armed forces or other organized armed groups is punishable as a criminal offence under their national laws

17 The problem does not involve the recruitment practices of the vast majority of States The heart of the problem involves practices that force young children, often at gunpoint or through kidnapping, to take up arms in support of militias and paramilitary groups engaged in hostilities It is essential that any protocol require that such practices be made criminal and provides a mechanism to scrutinize the enforcement of such laws against offenders

International cooperation

18. The trauma and tragedy of child soldiers and victims in many parts of the world is of great concern to the United States. The impact of war on children has terrible lasting effects that can endure for years and even generations. In recent years, there has been an increasing use of young children as soldiers in armed conflict. This is a practice for which there is no justification. Throughout the world, young children are recruited into military service, often coercively by rebel groups, compelled to fight, then left to pick up the pieces of their often shattered minds and bodies. States can and should assist in bringing an end to this tragedy through international cooperation and assistance.

19. Under the United States proposal States Parties undertake to cooperate to facilitate the elimination of the use of children as soldiers in violation of the protocol and to assist in the rehabilitation and social reintegration of children who have been victims of armed conflicts in violation of international law.

20. The United States has contributed substantial resources to programmes aimed at reintegrating child soldiers into society and is committed to continue to develop rehabilitation approaches that are effective in addressing a seriously difficult problem. Since 1989, the USAID Displaced Children and Orphan's Fund has spent more than $30 million in supporting activities to assist these children, including demobilization, rehabilitation and integration into civilian society. The protocol should serve as a means for encouraging such programmes and reviewing the support that each State gives to them; they would be important tools for increasing assistance to children who are the victims of armed conflict.

Reporting mechanism

21. The United States proposal contemplates a robust reporting mechanism, which would provide the United Nations (whether the Committee on the Rights of the Child or the High Commissioner for Human Rights - or both) with the means and opportunity to inquire, on the basis of the substantive provisions of the protocol, how a State Party was satisfying its obligations to protect children in armed conflict. This mechanism would provide the United Nations with an organic tool to scrutinize this important area.

Ratification by the United States

22. The United States proposal would permit any State to become a party to the protocol - whether or not that State is a party to the Convention on the Rights of the Child. While the United States is not part of the problem with respect to child soldiers, it is important that it be part of the solution. Recent history demonstrates that there will be few concerted military actions in which the United States does not participate in some way.

23. On 5 November 1999 the United States Senate gave its advice and consent to ratification of ILO Convention No. 182 on the worst forms of child labour. That Convention includes a provision prohibiting the forced or compulsory recruitment of children under the age of 18 for use in armed conflict. The new provision constitutes a significant enhancement of the current international standard of age 15.

Conclusion

24. The United States appeals to other Governments to take all actions available so that the General Assembly can achieve consensus on this important issue and move forward to find new ways to enforce these norms for the most vulnerable children, who desperately need the world's full attention.

OPTIONAL PROTOCOL TO THE CONVENTION ON THE RIGHTS OF THE CHILD ON THE INVOLVEMENT OF CHILDREN IN ARMED CONFLICT

The States Parties to the present Protocol,

Disturbed by the harmful and widespread impact of armed conflict on children and the long-term consequences this has for durable peace, security and development,

Condemning the targeting of children in situations of armed conflict, including killing and maiming, sexual violence, abduction and forced displacement, recruitment and use of children in armed conflict in violation of international law, and direct attacks on objects protected under international law, including places generally having a significant presence of children, such as schools and hospitals,

Condemning with gravest concern **the recruitment, training and use of children in armed conflicts by dissident armed forces or other organized armed groups**,

Recalling the obligation of each party to an armed conflict to abide by the provisions of international humanitarian law,

Convinced of the need to strengthen international cooperation regarding the physical and psychological rehabilitation and social reintegration of children who have been victims of armed conflicts in violation of international law,

Calling upon all parties to armed conflict to ensure the full, safe and unhindered access of humanitarian personnel and the delivery of humanitarian assistance to children affected by armed conflict,

Convinced that an Optional Protocol to the Convention on the Rights of the Child that commits States Parties to raise the minimum age for recruitment of persons into their armed forces and the minimum age for their participation in hostilities will implement effectively the principle that the best interests of the child are a primary consideration in all actions concerning children and encourage States Parties to increase protections currently afforded to children under international law,

Noting with satisfaction recent efforts to prohibit the use of children as soldiers in violation of international law, in particular International Labour Organization Convention No. 182 (1999) on the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, which prohibits forced or compulsory recruitment of children for use in armed conflict,

Persuaded of the utility of calling upon States Parties to report to an appropriate body the details of their compliance with the obligations that they have assumed under this Protocol,

Have agreed as follows:

Article 1

1. States Parties shall increase the minimum age, which is set out in article 38 of the Convention on the Rights of the Child as age 15, for the voluntary recruitment of persons into their national armed forces and for the participation of such persons in armed conflict.

2. States Parties shall ensure that those under the age of 18 are not compulsorily recruited into their national armed forces.

Article 2

1. Each State Party shall, at the time of ratification of this Protocol, deposit a binding declaration which shall set forth the minimum age that it will apply with respect to (a) voluntary recruitment of persons into its national armed forces and (b) participation of such persons in armed conflict.

Article 3

1. States Parties that permit persons under the age of 18 to volunteer for service in their national armed forces shall maintain safeguards to ensure that the person has not been forced or coerced into service. Such safeguards may consist of parental consent, the consent of a legal guardian, or other appropriate mechanism capable of verification and oversight.

2. Each State Party that permits persons under the age of 18 to volunteer for service in its national armed forces shall include in its binding declaration a description of the safeguards it has adopted to ensure that such enlistment is not forced or coerced.

Article 4

Each State Party shall review its declaration(s) under article 2 on an annual basis, with a view to the possibility of increasing the minimum age that it applies for the voluntary enlistment of persons into its national armed forces and for the participation of such persons in armed conflict, and shall deposit any declaration(s) accepting higher standards when applicable.

Article 5

States Parties shall prohibit the recruitment in their territory of persons below age 18 by dissident armed forces or other organized armed groups for use in armed conflict. States Parties shall enact such legislation as may be necessary to ensure that such recruitment in their territory is punishable as a criminal offence under their national laws.

Article 6

States Parties undertake to cooperate to facilitate the elimination of the use of children as soldiers in violation of this Protocol and the rehabilitation and social reintegration of children who have been victims of armed conflicts in violation of international law.

Article 7

Nothing in the present Protocol shall be construed so as to preclude provisions in the law of a State Party or in international instruments and international humanitarian law that are more conducive to the realization of the rights of the child.

Article 8

States Parties shall provide annual reports to the Committee on the Rights of the Child concerning their compliance with the provisions of this Protocol, in particular reporting on:

(a) The status of their declarations;

(b) The safeguards that ensure that any persons under the age of 18 who enlist into their national armed forces do so voluntarily;

(c) Any incidents involving the forcible or compulsory recruitment of persons under 18 for use in armed conflict by their national armed forces, dissident armed forces or other organized armed groups;

(d) The steps that they have taken to cooperate in the elimination of the use of child soldiers in violation of this Protocol and to provide for the rehabilitation and social reintegration of children who have been victims of armed conflicts in violation of international law.

Article 9

The present Protocol shall be subject to ratification or open for accession by any State.

Article 10

The present Protocol shall enter into force three months after the deposit of the tenth instrument of ratification or accession.

Article 11

1. Any State Party may denounce the present Protocol at any time by written notification to the Secretary-General of the United Nations, who shall thereafter inform the other States Parties to the present Protocol. If, however, on the entry of that year the denouncing State Party is engaged in an international or internal armed conflict, the denunciation shall not take effect before the end of such armed conflict.

2. Such a denunciation shall not have the effect of releasing the State Party from its obligations under the present Protocol in regard to any act which occurs prior to the date at which the denunciation becomes effective. Nor shall such a denunciation prejudice in any way the continued consideration of any matter which is already under consideration by the Committee prior to the date at which the denunciation becomes effective.

Article 12

1. The present Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of the present Protocol to all States Parties to the present Protocol.